

Terrence Kay
OSB#814375
Terrence Kay, P.C.
3155 River Road S, Suite 150
Salem, OR 97302-9836
Telephone: 503/588-1944
Fax: 503/588-1946
Email: Terrence@kaylawfirm.com

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WAYNE McFARLIN

Plaintiff,

v.

EDWARD GORMLEY, an individual; CITY
OF McMinnville, a Municipal Corporation;
CITY COUNTY INSURANCE SERVICES
TRUST; ROD BROWN, an individual;
PUBLIC SAFETY LIABILITY
MANAGEMENT INC., an Oregon corporation;
WALDO FARNHAM

Defendants.

Case No. 3:06-CV-1594-HU

**PLAINTIFF MEMORANDUM
OPPOSING DEFENDANTS CITY
COUNTY, ROD BROWN and
PUBLIC SAFETY LIABILITY'S
MOTION FOR SUMMARY
JUDGMENT**

Introduction

Defendant Brown by his own admission has acted, with regard to McFarlin, individually, for the City and for CCIST/PSLMI, engaging in a course of conduct with an objective to obtain McFarlin's employment termination, which occurred as a result of Brown's negligence as a Risk

Page 1 – Plaintiff Memorandum Opposing Defendants City County, Rod Brown and Public
Safety Liability's Motion for Summary Judgment

G:\1-WP\McFARLIN\MemoOppCCIS101807.1sn.doc

TERRENCE KAY, P.C.

Attorney at Law

3155 River Road S., Suite 150 - Salem, OR 97302

Telephone: 503/588-1944 Fax: 503/588-1946

Email: terrence@kaylawfirm.com

Manager for the City and through his intentional acts to deprive McFarlin of due process rights.¹

Material Facts

Plaintiff relies on and incorporates the section on Material Facts of his Memorandum Opposing Defendants Gormley and City Motion for Summary Judgment as those pertain to Defendants Brown, CCIST and PSLMI, and incorporates that by reference, with the Concise Statements of Material Facts and Responses and the Affidavit of Plaintiff, deposition excerpts, Exhibits and Declarations filed by Plaintiff.

Standard of Review

Plaintiff relies upon and incorporates by reference as if fully set forth the entire section on Standard of Review and Plaintiff's Memorandum Opposing Defendants Gormley and City Motion for Summary Judgment and incorporates that by reference.

Argument

1. Plaintiff has Not Waived all Claims.

Plaintiff incorporates by reference all its arguments in opposition to the Motion by Defendants' Gormley and City and notes further that there are fact issues as to Brown's conduct individually according to his own declaration that he provided services individually (requiring no tort claim notice) or for the City, in which instance Brown's actions were the subject of notice under Exhibit 10.

2. Plaintiff Provided Tort Claim Notice to CCIS pursuant to ORS 30.265

Plaintiff incorporates in opposition Plaintiff's Motion to Conform Pleadings to the Evidence as to these Defendants, and alternatively to amend by interlineation to plead a tort claim notice that was timely given to these Defendants.

¹ As the moving Defendants incorporated all the City's MSJ documents by reference, Plaintiff hereby incorporates its entire opposing Memorandum in Opposition filed to the City's MSJ documents.

At best for these Defendants there is a fact issue, but not a dispositive matter for summary judgment that notice of claims was given within 180 days of Plaintiff's discovery. ORS 30.275(2)(b). The period within which notice must be given begins to run on the first day that there has been some discernible injury and the plaintiff has had a reasonable opportunity to discover both the injury and the identity of the tortfeasor. *Adams v. Oregon State Police*, 289 Or 233, 235, 611 P2d 1153 (1980). Plaintiff has put evidence forth that he only discovered the identities of these Defendants as to action giving rise to liability within six months of giving notice and filing claims against them. This is sufficient, since notice requirements may be satisfied by formal notice, actual notice, or by commencement of an action within the required notice period.

The discovery standard is set forth in *Adams v. Oregon State Police*, 289 Or. 233, 235, 611 P.2d 1153, 1154 (1980):

"Two issues are presented in this action under ORS 30.260 to 30.300 (Tort Claims Act) for damages resulting from negligence of the Oregon State Police (herein 'OSP'). [FN1 omitted] The first issue is whether the 180 day notice period prescribed by ORS 30.275(1) commences from the date of the incident precipitating plaintiff's injury or from the date plaintiff discovers the identity of the tortfeasor. We hold it commences on the date of discovery."

3. Brown and PSLM are Proper Parties.

Plaintiff incorporates his Memorandum and evidence opposing the Motion for Summary Judgment by Defendant Gormley and City as if fully set forth, including specifically Section 2. There are fact issues as to whether these Defendants were within the scope of protected conduct or authority, and Brown acknowledges he provided services individually.

4. Plaintiff's Interference with Contract (Fifth Claim for Relief) is Sufficient.

Plaintiff incorporates his Memorandum in Opposition to the Motion by Defendant Gormley and City.

5. Plaintiff's Interference with Prospective Business Relations (Sixth Claim for Relief) is Sufficient.

Plaintiff incorporates his Memorandum in Opposition to the Motion by Defendant Gormley and City.

6. Plaintiff's Conspiracy Claims (Ninth, Tenth, and Eleventh Claims for Relief) are Sufficient.

Plaintiff incorporates his Memorandum in Opposition to the Motion by Defendant Gormley and City.

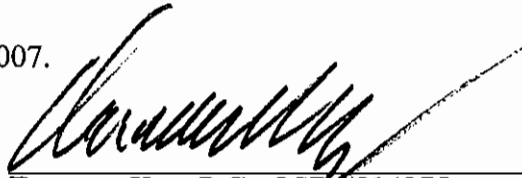
7. Plaintiff's Negligence Claim (Thirteenth Claim for Relief) is Sufficient.

Plaintiff incorporates his Memorandum in Opposition to the Motion by Defendant Gormley and City.

8. Plaintiff's Defamation Claim (Fourteenth Claim for Relief) is Sufficient.

Plaintiff incorporates his Memorandum in Opposition to the Motion by Defendant Gormley and City.

Dated this 12 day of November, 2007.



Terrence Kay, P.C., OSB #814375
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2007, I served the foregoing PLAINTIFF'S MEMORANDUM OPPOSING DEFENDANTS CITY COUNTY, ROD BROWN and PUBLIC SAFETY LIABILITY'S MOTION FOR SUMMARY JUDGMENT on the following parties:

Karen O'Kasey
Hoffman Hart & Wagner LLP
1000 SW Broadway, Suite 2000
Portland, OR 97205
Fax: (503) 222-2301

Of Attorneys for Defendants Gormley and City of McMinnville

Mr. Robert S. Wagner
Miller & Wagner LLP
2210 NW Flanders Street
Portland, OR 97201
Fax: (503) 299-6106

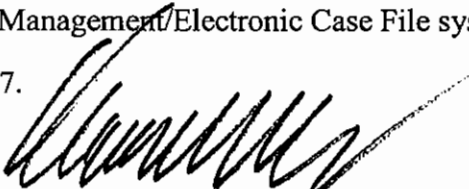
Of Attorneys for Defendants Brown, CCIST and PSLM

Frank Lagesen
Walter Sweek
Cosgrave Vergeer Kester LLP
805 SW Broadway 8th Floor
Portland, OR 97205
Fax: (503) 323-9019

Of Attorneys for Defendant Farnham

by electronic means through the Court's Case Management/Electronic Case File system.

Dated this 12 day of November, 2007.



Terrence Kay, P.C., OSB #814375
Attorney for Plaintiff